

REMARKS

This Amendment is submitted simultaneously with Applicants' Response to Notice of Non-Compliance pursuant to 37 C.F.R. § 1.121 in response to the Notice of Non-Compliance dated July 2, 2001 and the Office Action mailed on February 16, 2001. In the Office Action, Claims 2, 11, 17, 18 and 20 are rejected under 35 U.S.C. § 112, second paragraph; Claims 1-6 and 14-20 are rejected under 35 U.S.C. § 102(b); Claims 7-13 are rejected under 35 U.S.C. § 103(a); and Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

Claims 2, 18 and 20 have been amended. Pursuant to 37 C.F.R. § 1.121, Applicants have submitted a clean copy of the amendments as detailed above and a marked-up version of the amendments indicating underlining for added text and bracketing for deleted text attached hereto in the Appendix.

Applicants respectfully submit that the rejections of pending Claims 1-20 have been overcome or are improper in view of the amendments and for the reasons set forth below.

In the Office Action, Claims 2, 11, 17, 18 and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Patent Office asserts that there is no antecedent basis in Claim 1 for "the elastomer," "the softener" or "the emulsifier" (Claim 2) and in Claim 18 for "the chewing gum formulation" (Claim 18) and the "water soluble portion" (Claim 20). Further, the Patent Office asserts that each of Claims 2, 11 and 17 does not further limit the claim from which each depends.

Applicants submit that Claims 2, 18 and 20 have been amended to provide a proper antecedent basis. Applicants note for the record that the amendments to Claims 2, 18 and 20 were made for clarification purposes and therefore do not have a narrowing effect on the scope of the claimed invention as required by Claims 2, 18 and 20.

Further, Applicants submit that the Patent Office's assertion that each of Claim 2, 11 and 17 do not further limit the claim from which each depends is improper. The Patent Office asserts that

in each of Claims 2, 11 and 17 the range of emulsifier is not within the range for the lecithin recited in Claims 1, 8 and 14, respectively.

Applicants question why the difference in the ranges has any bearing on whether each of these claims clearly define the claimed invention. The lecithin ranges of Claims 1, 8 and 14 and the emulsifier ranges of Claims 2, 11 and 17 are clearly supported in the Specification, for example, on page 5 and page 3, respectively. Therefore, Applicants submit that Claims 2, 11, 17 and 18 fully comply with 35 U.S.C. § 112.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, Claims 1-6 and 14-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,518,615 ("*Cherukuri 615*"), U.S. Patent No. 4,794,003 ("*Cherukuri 003*") or U.S. Patent No. 4,452,820 ("*D'Amelia*"). The Patent Office essentially asserts that each of these references discloses each and every feature of the claimed invention.

Applicants respectfully submit that the rejection of Claims 1-6 and 14-20 under 35 U.S.C. § 102(b) is improper. Of these claims, Claims 1, 14 and 18 are independent claims which each relate to a chewing gum that includes, in part, an amount of lecithin and does not include a filler. More specifically, Claim 1 recites a chewing gum that includes approximately 3% to about 15% by weight lecithin; Claim 14 recites a chewing gum that includes at least 5% by weight lecithin; and Claim 18 recites a method for producing a chewing gum wherein a resultant gum cud that is produced has reduced adhesion to environmental surfaces as compared to a gum cud produced by typical chewing gum formulations. The remaining claims depend from either of independent Claims 1, 14 and 18.

Applicants have surprisingly found that chewing gums which include lecithin and do not include filler in the gum base can produce gum cuds that if improperly discarded have reduced

adhesion to environmental surfaces, such as wood, concrete, fabric, carpet, metal and other such surfaces. *See*, Specification, page 4, lines 25-28.

In contrast, the clear emphasis of each of the references is that the filler and/or lecithin are optional ingredients. For example, *Cherukuri 003* discloses that fillers may be added if desired and emulsifiers, such as lecithin, may be optionally used. *See*, *Cherukuri 003*, column 2, line 50-57; column 6, lines 34-36. *D'Amelia*, like *Cherukuri 003*, discloses that the use of a filler and/or emulsifier (lecithin) is optional. *See*, *D'Amelia* Abstract. At the most, *Cherukuri 615* discloses that the use of a filler within chewing gum is optional. In the Abstract, *Cherukuri 615* discloses that the chewing gum base composition includes fillers.

Indeed, the use of lecithin and the non-use of a filler are not optional as required by the claimed invention. Applicants have surprisingly found that a chewing gum having such features can facilitate reduced adhesion thereof to environmental surfaces as previously discussed. Nowhere does *Cherukuri 003*, *D'Amelia* or *Cherukuri 615* recognize that a gum having such features can reduce adhesive properties of the gum, particularly after the gum has been chewed.

Based on the fact that each of the references fails to disclose a chewing gum that includes lecithin and that does not include a filler, let alone such chewing gum that can reduce adhesion to environmental surfaces, Applicants submit that the references fail to anticipate Claims 1-6, and 14-20. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, Claims 8-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cherukuri 615*, *Cherukuri 003* or *D'Amelia*. The Patent Office asserts that each of these references teaches or suggests each and every feature of the claims mentioned as required by Claims 8-13. Yet, the Patent Office admits that each of these references fails to disclose the lecithin features of each of these claims.

Claims 8-13 relate to a gum base that, in part, includes at least 20% by weight lecithin and does not include a filler. Of these claims, Claim 8 is the sole independent claim. As previously discussed, Applicants have surprisingly found that chewing gums that include lecithin and do not include filler in the gum base can produce gum cuds that if improperly discarded have reduced adhesion to environmental surfaces such as wood, concrete, fabric, carpet, metal and other surfaces.

In contrast, each of these references fails to disclose the use of lecithin and/or the non-use of a filler within a gum base. As previously discussed, each of the references merely discloses that emulsifiers such as lecithin and/or fillers are optional ingredients of chewing gum.

Further, nowhere do each of these references teach or suggest such features, let alone a gum base that includes at least 20% by weight of lecithin as required by independent Claim 8. As previously discussed, nowhere does *Cherukuri 003*, *D'Amelia* or *Cherukuri 615* recognize that a gum having such features can reduce adhesive properties of the gum, particularly after the gum has been chewed. Indeed, Applicants have surprisingly found that chewing gums that include lecithin and do not include filler in the gum base can produce gum cuds that if improperly discarded have reduced adhesion to environmental surfaces. Moreover, Applicants have conducted experimental tests to demonstrate the efficacy of a chewing gum having such features. See, Specification, pages 11-14.

Based on the fact that the references fail to teach or suggest each and every feature of Claims 8-13, Applicants submit that the references, alone or in combination, fail to render obvious the claimed invention as required by these claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, Claim 7 is rejected under 35 U.S.C. § 103 as being unpatentable over *Cherukuri 615*, *Cherukuri 003* or *D'Amelia* in view of U.S. Patent No. 4,246,286 ("*Klose*"). The

Patent Office essentially relies on *Klose* to remedy the deficiencies of the other references, particularly the deficiencies with respect to the antioxidant and colorant features of Claim 7.

Applicants submit that this rejection is improper. Claim 7 depends from independent Claim 1 and therefore as a matter of law incorporates each feature of independent Claim 1.


As previously discussed, *Cherukuri 615*, *Cherukuri 003* and *D'Amelia* each fail to teach or suggest each and every feature, such as the use of lecithin and the non-use of filler, as required by independent Claim 1. Further, *Klose* cannot remedy the deficiencies of these references. The Patent Office merely relies on *Klose* for its teaching regarding antioxidants and colorants.

Based on the fact that the cited references fail to teach or suggest each and every feature of Claim 7, Applicants submit that these references, alone or in combination, fail to render obvious Claim 7. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-16 of co-pending application No. 09/648,028 in view of *Cherukuri 615*, *Cherukuri 003* or *D'Amelia*. In response, Applicants state that upon notice of allowable subject matter in either one of the co-pending applications that a suitable Terminal Disclaimer will be filed to address this rejection.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of the same.

Respectfully submitted,



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APPENDIX

Version with markings to show changes made

IN THE CLAIMS

Please amend Claims 2, 18 and 20 as follows:

2. (Amended) The chewing gum of Claim 1 [wherein] including:

[the] an elastomer comprises approximately 3% to about 50% by weight of the water insoluble portion;

[the] a softener comprises approximately 3% to about 50% by weight of the water insoluble portion; and

[the] an emulsifier comprises approximately 2% to about 20% by weight of the water insoluble portion.

18. (Amended) A method for producing chewing gum wherein a resultant gum cud that is produced has reduced adhesion to environmental surfaces as compared to a gum cud produced by typical chewing gum formulations comprising the steps of using a gum base to produce the chewing gum that does not include a filler and adding at least 3% by weight lecithin to the chewing gum [formulation].

20. (Amended) The method of Claim 18 further comprising using a water soluble portion wherein the lecithin is added to the water soluble portion.